

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re Bryan Bell,

Debtor.

No. C07-1500Z

BRYAN BELL,

Plaintiff/Appellant,

V.

AURORA LOAN SERVICES, et al.,

Defendants/Appellees.

ORDER

This matter comes before the Court on Plaintiff/Appellant Bryan Bell's appeal under 28 U.S.C. § 158(a) or (b) from Bankruptcy Judge Thomas Glover's Order Granting Summary Judgment entered in the Adversary Proceeding No. 07-01140-KAO. Having considered the briefs and the record on appeal, the Court now enters the following Order affirming summary judgment in favor of Defendants/Appellees.

I. Procedural History

On February 22, 2007, Bryan Bell filed a Chapter 13 bankruptcy proceeding.

Bankruptcy Case No. 07-10717-KAO, docket no. 1 (Chapter 13 Voluntary Petition). On

1 March 16, 2007, the purchasers of Bell's house, Rodney and Jennifer Danz ("Danz"), moved
 2 for relief from an automatic stay. Bankruptcy Case No. 07-10717-KAO, docket no. 17
 3 (Motion for Relief from Stay). On April 2, 2007, Bell moved to invalidate the foreclosure
 4 sale. Bankruptcy Case No. 07-10717-KAO, docket no. 19 (Motion to Void Non-Judicial
 5 Foreclosure Sale). On April 26, 2007, by letter ruling, the Honorable Karen A. Overstreet
 6 denied both motions and held that "[t]his issue falls squarely within the parameters of
 7 Bankruptcy Rule 7001 and should be the subject of an adversary proceeding." Record on
 8 Appeal ("ROA")¹ 1.32 (Letter Ruling) at 3.

9 On May 18, 2007, Bell filed an adversary complaint to invalidate the non-judicial
 10 foreclosure. ROA 1.2 (Amended Compl.). On July 3, 2007, Danz moved for summary
 11 judgment. ROA 1.5 (Mot. for Summ. J.). On August 20, 2007, the Honorable Thomas
 12 Glover granted Danz's Motion for Summary Judgment. ROA 1.23 (Order Granting
 13 Summary Judgment). On August 27, 2007, Bell filed a Notice of Appeal under 28 U.S.C.
 14 § 158(a) or (b) from Judge Glover's Order Granting Summary Judgment entered in the
 15 Adversary Proceeding No. 07-01140-KAO. ROA 1.24 (Notice of Appeal).

16 **II. Standard of Review**

17 A district court reviews *de novo* a bankruptcy court's decision to grant summary
 18 judgment. Neilson v. United States (In re Olshan), 356 F.3d 1078, 1083 (9th Cir. 2004); see
 19 also In re Raintree Healthcare Corp., 431 F.3d 685, 687 (9th Cir. 2005). The Court must
 20 grant summary judgment if no genuine issue of material fact exists and the moving party is
 21 entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). The moving party bears the
 22 initial burden of demonstrating the absence of a genuine issue of material fact. Celotex
 23 Corp. v. Catrett, 477 U.S. 317, 323 (1986). A fact is material if it might affect the outcome

24
 25 ¹ The Record on Appeal ("ROA") corresponds to the designated numbers in the
 26 Designation of Contents for Inclusion in Record on Appeal, Case No. 07-1500-TSZ, docket no.
 5-2. The documents for inclusion on appeal come from two proceedings, the Bankruptcy Case
 No. 07-10717-KAO (also referred to by the parties as the "Chapter 13" case) and the Adversary
 Case No. 07-01140-KAO.

1 of the suit under the governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
 2 (1986). In support of its motion for summary judgment, the moving party need not negate
 3 the opponent's claim, Celotex, 477 U.S. at 323; rather, the moving party will be entitled to
 4 judgment if the evidence is not sufficient for a jury to return a verdict in favor of the
 5 opponent. Anderson, 477 U.S. at 249.

6 **III. Facts**

7 Bryan Bell had a home mortgage with Plaza Home Mortgage, serviced by Aurora
 8 Loan Services (“Aurora”). ROA 1.17 (Bell Decl.) ¶ 3. In 2006, Bell's mortgage was in
 9 arrears and foreclosure proceedings commenced. ROA 1.13 (Bershias Decl.) ¶ 5. On or
 10 about August 22, 2006, the trustee of the deed, Cal-Western Reconveyance Corporation
 11 (“Cal-Western”), issued a Notice of Default to Bell. ROA 1.13 (Bershias Decl.) ¶¶ 4-5.
 12 When the default cited therein was not cured, Cal-Western prepared, recorded and served on
 13 Bell a Notice of Trustee's Sale, scheduling the sale for December 22, 2006. ROA 1.13
 14 (Bershias Decl.) ¶ 5.

15 On or about December 20, 2006, Bell and Aurora entered into a Special Forbearance
 16 Agreement. ROA 1.13 (Bershias Decl.) ¶ 6, Ex. B (Forbearance Agreement). The
 17 Forbearance Agreement states that Bell had arrears of \$14,603.49, accumulated from May 1,
 18 2006 to December 20, 2006. ROA 1.13 (Bershias Decl.) ¶ 6, Ex. B (Forbearance Agreement)
 19 at 1. The Forbearance Agreement required Bell to make an initial payment of \$7,500 on the
 20 date it was signed and subsequent elevated monthly payments until the arrears were satisfied.
 21 (Bershias Decl.) ¶ 6, Ex. B (Forbearance Agreement) at 2, ¶ 3b. Bell made the initial \$7,500
 22 payment when he returned the signed document. ROA 1.17 (Bell Decl.) ¶¶ 3-4.

23 Despite the fact that the foreclosure sale was postponed by the Forbearance
 24 Agreement, Cal-Western “continued” the trustee's sale originally scheduled for December
 25 22, 2006, to December 29, 2006, by oral “public proclamation” at the time and place fixed
 26

1 for the trustee's sale; Cal-Western subsequently continued the trustee's sale from December
 2 29, 2006, to February 2, 2007. ROA 1.12 (Womack Decl.) ¶ 5; ROA 1.13 (Bershaw Decl.)
 3 ¶ 9. A written notice of the changes to the original sale date was not sent to Bell; Bell did
 4 not know that the sale date was being changed by "oral proclamation." ROA 1.17 (Bell
 5 Decl.)

6 ¶ 7.

7 The Forbearance Agreement required Bell to pay \$3,555 for each of the four months
 8 after execution; the first monthly payment was due on January 20, 2007. ROA 1.13 (Bershaw
 9 Decl.) ¶ 6, Ex. B (Forbearance Agreement) at 2, ¶ 3c. On January 25, 2007, Bell sent in a
 10 cashier's check; as such, his first monthly payment was five days late. ROA 1.13 (Bershaw
 11 Decl.) ¶ 11, Ex. C (Bell's Cashier's Check for \$3,555 dated on January 25, 2007). Aurora
 12 subsequently returned the cashier's check to Bell with a letter dated January 29, 2007; the
 13 letter stated that the check "... is not sufficient to bring this loan current and we do not have
 14 arrangements with you to bring your loan current." ROA 1.13 (Bershaw Decl.) ¶ 12, Ex. D
 15 (Letter from Aurora) at 1. The letter and returned check did not reach Bell until February 20,
 16 2007. ROA 1.17 (Bell Decl.) ¶ 7.

17 On February 2, 2007, Cal-Western conducted the trustee's sale. ROA 1.13 (Bershaw
 18 Decl.) ¶ 13. Equity Partners Northwest Funding, LLC ("EPNF"), acting as agent for buyer
 19 Danz, submitted the highest bid of \$243,200.00. Id. Cal-Western accepted the bid. ROA
 20 1.6 (R. Danz Decl.) at 2, Ex. A (Acceptance of Bid). The deed was delivered to EPNF on
 21 February 21, 2007. ROA 1.7 (Walker Decl.) at 2:6-11; ROA 1.13 (Bershaw Decl.) ¶ 15. The
 22 next day, on February 22, 2007, Bell filed for bankruptcy. Bankruptcy Case No. 07-10717-
 23 KAO (Chapter 13 Voluntary Petition). On February 22, 2007, Bell's counsel, David A.
 24 Leen, notified Jennifer Danz of Bell's bankruptcy case. ROA 1.15 (Leen Decl.) ¶ 1; ROA
 25 1.17 (Bell Decl.) ¶ 9. On February 23, 2007, the deed was recorded under Rod and Jennifer
 26

1 Danz's names. ROA 1.8 (Dickmeyer Decl.) ¶ D, Ex. D (Recordation); ROA 1.13 (Bersh
 2 Decl.) ¶ 14.

3

4 **IV. Discussion**

5 Bell argues that the foreclosure sale was invalid. Failure to follow the mandatory
 6 requirements of the Washington Deeds of Trust Act and/or breaching a fiduciary duty may
 7 result in a void sale. Cox v. Helenius, 103 Wn.2d 383, 388-390 (1985). If a sale is void, the
 8 sale is set aside even if there is a bona fide purchaser. Id. Bell advances a variety of theories
 9 for invalidating the foreclosure: (A) the trustee breached express written terms of the Deed of
 10 Trust; (B) Bell was not in default at the time of the sale; (C) the sale was held before a
 11 mandatory delay required by the Washington Deeds of Trust Act; (D) the the Washington
 12 Deeds of Trust Act requires a written notice before a sale; and (E) Bell still had an interest in
 13 the property on the day he filed for bankruptcy.

14 **A. Did the Trustee Breach the Written Terms of Notice Required by the Deed
 15 of Trust?**

16 Bell argues that the trustee breached express written terms of the Deed of Trust. The
 17 Deed of Trust provides that “[*all notices* given by Borrower **or Lender** in connection with
 18 this Security Instrument **must be in writing.**” ROA 1.13 (Bersh Decl.) ¶ 3, Ex. A (Deed of
 19 Trust) at 11, ¶ 15 (emphasis added). The parties do not dispute Bell’s assertion that he did
 20 not receive a written notice of the final auction date of Bell’s home. ROA 1.17 (Bell Decl.)
 21 ¶ 7. Bell argues that the lack of written notice was a violation of paragraph 15 of the Deed
 22 of Trust. Paragraph 15 of the Deed of Trust only requires a written notice by the *lender*; the
 23 Deed is silent as to any written notice requirement by the *trustee*. Because it was the trustee
 24 who sold the home, the trustee did not violate Paragraph 15 of the Deed of Trust by not
 25 giving Bell written notice.

26 Bell also argues that the trustee was acting as the agent of the lender; as such, Bell
 27 reasons that the trustee was also bound by the written notice requirement in Paragraph 15 of

1 the Deed of Trust. Danz did not directly address this argument. See Appellee's Brief,
 2 docket no. 8, at 7:8-15. However, Paragraph 22 of the Deed of Trust authorizes the trustee
 3 to postpone a sale by oral "public announcement":

4 " . . . Trustee may postpone sale of the Property for a period or periods
 5 permitted by Applicable Law ***by public announcement at the time and place
 fixed in the notice of sale.***"

6 ROA 1.13 (Bershias Decl.) ¶ 3, Ex. A (Deed of Trust) at 14, ¶ 22 (emphasis added).
 7

8 Because the Deed of Trust allows the trustee to postpone a sale by "public
 9 announcement," the actions of the trustee, Cal-Western, were within the explicit language
 10 specified by the Deed of Trust. Reconciling Paragraph 22 (allowing public announcements
 11 by the trustee) with Paragraph 15 (requiring written notices by the lender) would not be
 12 possible if the trustee were to be bound to the same notice requirements as the lender. The
 13 Court holds that the Deed of Trust did not require the trustee, Cal-Western, to send a written
 14 notice to Bell regarding the postponements of the sale.

15 **B. Was Bell in Default When the Non-Judicial Sale Occurred?**

16 Bell argues that he was not in default at the time of the trustee's sale. A non-judicial
 17 sale may only occur after the borrower has defaulted. See RCW 61.24.040. Bell argues that
 18 he was not in default when the foreclosure sale occurred as the lender had accepted the first
 19 two payments under the Forbearance Agreement.

20 Danz makes two arguments in response. First, Danz argues that Bell was in default of
 21 the mortgage at the time the Forbearance Agreement was signed because executing the
 22 Forbearance Agreement did not cure the default. The Forbearance Agreement, Danz argues,
 23 merely provided a means by which the default could be cured. There are several sections of
 24 the Forbearance Agreement that support the view that Bell's default in the mortgage still
 25 existed when the Forbearance Agreement was signed. The Forbearance Agreement provides,
 26 in pertinent part:

1 “WHEREAS, Borrower(s) ***are in default*** in the payment of monthly
 2 installments of principal, interest, escrow and other payments . . .”
 3 * * *

4 “3d. By executing and paying under the terms of this Agreement, your
 5 delinquent arrearage ***will be brought current.***”
 6 * * *

7 “6. **Status of Default.** The Borrower(s) have been notified of the default. All
 8 of the provisions of the Note and/or Security Instrument previously executed,
 9 and amendments thereto, if any, ***shall remain in full force and effect***, except
 10 as specifically modified by the terms of this Agreement.”
 11 * * *

12 “11. **Reinstatement.** ***In the event Borrower(s) cure the arrearage*** by making
 13 all the payments required under this Agreement, . . .”

14 ROA 1.13 (Bershias Decl.) ¶ 6, Ex. B (Forbearance Agreement) at 1-4, ¶ 3d, ¶ 6, ¶ 11
 15 (emphasis added).

16 Second, Danz argues that in addition to being in default of the mortgage, Bell was in
 17 default of the Forbearance Agreement at the time of the foreclosure sale. The Forbearance
 18 Agreement required the first monthly payment on January 20, 2007. ROA 1.13 (Bershias
 19 Decl.) ¶ 6, Ex. B (Forbearance Agreement) at 2, ¶ 3c. Bell sent a check for the first month’s
 20 payment five days late, on January 25, 2007. Thus, Bell was in default of the payments due
 21 under the Forbearance Agreement at the time of the foreclosure sale on February 2, 2007.
 22 That Bell did not receive the returned check until February 20, 2007, i.e., after the
 23 foreclosure sale, does not change the fact that Bell was late with the payment.

24 For these reasons, the Court holds that Bell was in a state of default when the sale
 25 occurred on February 2, 2007.

26 **C. Was the Foreclosure Sale Held Prematurely?**

27 Bell argues that the sale was held before a mandatory delay required by statute. The
 28 Washington Deeds of Trust Act provides, in pertinent part: “The sale as authorized under
 29

1 this chapter shall not take place ***less than one hundred ninety days from the date of default***
 2 in any of the obligations secured.” RCW 61.24.040(8) (emphasis added).

3 In support of the argument that the sale was held prematurely, Bell relies on a
 4 declaration containing an attorney’s opinion. Appellant’s Brief, docket no. 7, at 16:17-26
 5 (citing ROA 1.16 (Henry Decl.) ¶ 3B). The attorney opined:

6 ***“Assuming the Bell’s were current on their financial obligations when they***
 7 ***entered into the loan modification agreement,*** the Trustee conducting the sale
 8 less than 2 months later made the sale premature in violation of RCW
 61.24.040 (“sale shall not take place less than 190 days from the date of default
 . . .”).

9 ROA 1.16 (Henry Decl.) ¶ 3B (emphasis added). The attorney’s opinion is not valid
 10 evidence because it is a legal conclusion, nor is it a persuasive legal opinion because it is
 11 based on an erroneous assumption that “the Bell’s were current on their financial obligations
 12 when they entered into the loan modification agreement.” The Court has concluded, in
 13 Section B of this Order, that Bell was in default at the time the parties executed the
 14 Forbearance Agreement on December 20, 2006.

15 The Forbearance Agreement documented that Bell was in default, starting in May
 16 2006. ROA 1.13 (Bershaw Decl.) ¶ 6, Ex. B (Forbearance Agreement) at 1. Because the
 17 foreclosure sale occurred on February 2, 2007, the sale occurred more than 190 days from
 18 the date of Bell’s first default. The Court holds that the trustee’s sale was conducted in
 19 compliance with RCW 61.24.040(8).

20 **D. Was the Non-Judicial Sale Void for Lack of a Written Notice Required by
 21 Either Statute or the Common Law?**

22 **1. Is a Sale Void under the Washington Deeds of Trust Act Because It
 23 Was Postponed By Oral Notice?**

24 Bell argues that the Washington Deeds of Trust Act requires a written notice before a
 25 sale. The Washington Deeds of Trust Act sets forth the form in which the notice of a non-
 26 judicial sale must occur. See, e.g., RCW 61.24.040(e) (providing that a trustee must “[c]ause
 a copy of the notice of sale described in RCW 61.24.040(1)(f) to be posted in a conspicuous

1 place on the property, or in lieu of posting, cause a copy of said notice to be served upon any
 2 occupant of the property”). At a date uncertain, but between August 22, 2006 and December
 3 20, 2006, the trustee, Cal-Western, served a Notice of Trustee’s Sale on Bell, scheduling the
 4 trustee’s sale for December 22, 2006. ROA 1.13 (Bershas Decl.) ¶ 5.

5 Once a written notice has been sent regarding the first date of sale, the Washington
 6 Deeds of Trust Act authorizes a trustee to continue a foreclosure sale by “public
 7 proclamation.”

8 (6) The trustee may for any cause the trustee deems advantageous, *continue the sale for a period or periods not exceeding a total of one hundred twenty days by a public proclamation at the time and place fixed for sale in the notice of sale* or, alternatively, by giving notice of the time and place of the
 9 postponed sale in the manner and to the persons specified in RCW
 10 61.24.040(1) (b), (c), (d), and (e) and publishing a copy of such notice once in
 11 the newspaper(s) described in RCW 61.24.040(3), more than seven days before
 12 the date fixed for sale in the notice of sale. No other notice of the postponed
 13 sale need be given.

14 RCW 61.24.040(6) (emphasis added). In the present case, the trustee twice continued the
 15 sale, for less than a total of one hundred twenty days, by public proclamation at the time and
 16 place fixed for sale in the notice of sale. ROA 1.12 (Womack Decl.) ¶ 5; ROA 1.13 (Bershas
 17 Decl.) ¶ 9. The Court holds that Cal-Western’s public proclamations continuing the trustee’s
 18 sale complied with the Washington Deeds of Trust Act.²

19 **2. Was the Foreclosure Sale Void Because the Trustee Instilled a Sense
 20 of Reliance or Because a Quasi Agreement Between Bell and the
 21 Lender Tolerated Late Payments?**

22 Bell argues that written notice, beyond any statutory requirements, must be given by
 23 the trustee if the trustee instills reliance on the borrower. In Cox v. Helenius, the

24 ² The Court notes that in addition to the Washington Deeds of Trust Act, the Forbearance
 25 Agreement specifies that the lender may continue the foreclosure proceedings if there was a
 26 missed payment without any notice to Bell: “*If any payment required under the terms of this
 27 Agreement is not made on the date required, the Lender may terminate this Agreement without
 28 any notice to the Borrower(s), . . . , may commence/continue the foreclosure proceedings
 29 according to the terms of the Note and/or Security Instrument, . . .*” ROA 1.13 (Bershas Decl.)
 ¶ 6, Ex. B (Forbearance Agreement) at 3, ¶ 6 (emphasis added).

1 Washington Supreme Court stated that “after a trustee undertakes a course of conduct
 2 reasonably calculated to instill a sense of reliance thereon by the grantor, that course of
 3 conduct may not be abandoned without notice to the grantor.” Cox v. Helenius, 103 Wn.2d
 4 383, 389-90 (1985) (citing Lupertino v. Carbahal, 35 Cal.App.3d 742 (1973)). In Cox, the
 5 trustee sold the property even though the trustee was aware that the debtor had initiated a
 6 legal proceeding. Cox, 103 Wn.2d at 386. In contrast, in the present case, Bell did not file
 7 for bankruptcy until after the sale had taken place. ROA 1.6 (R. Danz Decl.) at 2, Ex. A
 8 (Acceptance of Bid on Feb. 2, 2007); Bankruptcy Case No. 07-10717-KAO, docket no. 1
 9 (Chapter 13 Voluntary Petition filed Feb. 22, 2007). Bell also relies on an Oregon case in
 10 which the state appellate court held against the trustee at issue in our case, Cal-Western,
 11 because the foreclosure sale occurred just after a forbearance agreement was signed. See
 12 Staffordshire Invs. v. Cal-Western Reconveyance, 209 Or. App. 528, 149 P.3d 150 (2006).
 13 In Staffordshire Investments, the court determined that the debtor was in compliance with the
 14 terms of the forbearance agreement when the sale took place. Id., 209 Or.App. at 540. In
 15 contrast, in the present case, Bell was not in compliance with the Forbearance Agreement
 16 when the sale took place because he was five days late with the first monthly payment. The
 17 terms of the Forbearance Agreement spell out that “[t]ime is of the essence” and that “[t]here
 18 are no grace period [sic] as to any of the obligations.” ROA 1.13 (Bershaw Decl.) ¶ 6, Ex. B
 19 (Forbearance Agreement) at 3, ¶ 13. Bell has failed to show that trustee Cal-Western
 20 instilled in Bell a sense of reliance by conducting the sale on February 2, 2007.

21 Bell also argues that a new quasi agreement may be in place if the debtor is relying on
 22 behavior from the lender. In a Georgia case relied upon by Bell, the lender had a practice of
 23 accepting late payments and reinstating the loan, a practice that created a new quasi
 24 agreement. Curl v. Fed. Savs. & Loan Ass’n, 241 Ga. 29, 30, 244 S.E.2d 812 (1978). In
 25 contrast, in the present case, the Forbearance Agreement was executed in writing; it was not
 26 a quasi agreement based on oral conversation or conduct. Under its terms, there was no

provision for late payment. When Bell was late with the first monthly payment due under the Forbearance Agreement, Aurora did not accept his check, but rather returned it.³ ROA 1.13 (Bershas Decl.) ¶ 12, Ex. D (Letter from Aurora). In another case relied upon by Bell, the Idaho Supreme Court held that a debtor was entitled to written notice before foreclosure because a new forbearance agreement that had been signed by the debtor had cured the default. Taylor v. Just, 138 Idaho 137, 141, 59 P.3d 308 (2002). In Taylor, the court found that the terms of the forbearance agreement cured the default, and so the court determined that a new notice was required. Taylor, 138 Idaho at 141. In contrast, in the present case, Bell remained in a state of default when the parties executed the Forbearance Agreement, and that agreement did not cure the state of default.

The Court holds that there is no evidence of a quasi agreement or other conduct by the trustee, Cal-Western, or lender, Aurora, that instilled reliance on the part of the debtor, Bell.

E. Did Bell Still Have an Interest in the Property on the Day He Filed for Bankruptcy?

Bell argues that he had an interest in the property on the day he filed for bankruptcy. Federal bankruptcy law provides, in pertinent part:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. *Such estate is comprised of all the following property, wherever located and by whomever held:*

(1) Except as provided in subsections (b) and (c)(2) of this section, *all legal or equitable interests of the debtor in property as of the commencement of the case.*

11 U.S.C. § 541(a)(1) (emphasis added). Accordingly, if the debtor has “legal or equitable interests” on the day of filing for bankruptcy, the debtor’s interests may become part of the bankruptcy estate.

³ The Court acknowledges that Bell did not receive the letter from Aurora returning the check until February 20, 2007, eighteen days after the trustee’s sale, even though the letter was dated January 29, 2007. ROA 1.17 (Bell Decl.) ¶ 7.

1 In the present case, the sequence and timing of events after the non-judicial sale prove
 2 critical. The foreclosure sale occurred on February 2, 2007; the deed was delivered to Danz
 3 on February 21, 2007; Bell filed for bankruptcy on February 22, 2007; and on February 23,
 4 2007, the deed was recorded under Rod and Jennifer Danz's names. Bell argues that he still
 5 had an interest in the property on the day he filed for bankruptcy because Danz had not yet
 6 recorded the deed for the property. Danz responds that Bell was fully divested of his interest
 7 on the February 21, 2007 date of delivery of the deed to Danz's agent. Danz argues that the
 8 date of recordation of the property is immaterial to whether Danz had received the full
 9 interest in the disputed property based on the facts of this case.

10 The Washington Deeds of Trust Act entitled "Interest conveyed by trustee's deed –
 11 Sale is final if acceptance is properly recorded – Redemption precluded after sale," provides:

12 *When delivered to the purchaser, the trustee's deed shall convey all of the
 13 right, title, and interest in the real and personal property sold at the trustee's
 14 sale which the grantor had or had the power to convey at the time of the
 15 execution of the deed of trust, and such as the grantor may have thereafter
 16 acquired. If the trustee accepts a bid, then the trustee's sale is final as of the
 17 date and time of such acceptance if the trustee's deed is recorded within
 18 fifteen days thereafter.*

19 RCW 61.24.050 (emphasis added).

20 The parties construe RCW 61.24.050 in different ways. Bell argues that the last
 21 conditional sentence is a pre-requisite to transfer of ownership interest. Because the deed
 22 was recorded twenty-one days after the trustee's sale, and thus was not recorded within the
 23 fifteen-day period set forth in RCW 61.24.050, Bell argues the sale is void. Bell relies on
 24 dicta from a bankruptcy case interpreting a California statute, CAL. CIV. CODE § 2924h(c),
 25 similar to RCW 61.24.050, in which the Bankruptcy Judge stated that "[r]ecordation of the
 26 deed within fifteen days of the sale appears critical." In re Garner, 208 B.R. 698, 701
 (Bankr. N.D. Cal. 1997). In Garner, the sequence of events was similar to the pattern below:

27 Day 1: Foreclosure Sale of Deed of Trust to Buyer
 28 Day 2: Debtor files for bankruptcy

1 Day 3: Deed delivered to Buyer
 2 Day 7: Deed is recorded

3 Id. at 699. Thus, in Garner, delivery of the deed occurred after the debtor had filed for
 4 bankruptcy, and the only way the buyer could claim a valid sale was to “relate back” the
 5 transaction to the sale date. For that reason, in Garner, the recordation of the deed was
 6 “critical.” In contrast, in the present case, the deed was delivered to Danz before Bell filed
 7 for bankruptcy, so Danz does not need to take advantage of any relation back rule.⁴

8 In construing RCW 61.24.050, Danz emphasizes the first sentence, which, by its plain
 9 language, provides that the interest in the real property is conveyed to the purchaser when the
 10 trustee’s deed is delivered to the purchaser. See Udall v. T.D. Escrow Servs., Inc., 132
 11 Wn.App. 290 (2006) (rev’d on other grounds, Udall v. T.D. Escrow Servs., Inc., 159 Wn.2d
 12 903, 911 (2007) (“The trustee’s delivery of the deed to the purchaser is a ministerial act,
 13 symbolizing conveyance of property rights to the purchaser.”)). Danz then argues that the
 14 last conditional sentence of RCW 61.24.050 merely provides a mechanism by which the sale
 15 date *may* be “related back” in time if the deed is recorded within 15 days of the sale. The
 16 Washington Court of Appeals in Udall rejected a construction of RCW 61.24.050 that would
 17 have *required* a deed to be delivered *and* recorded in order for an interest to be transferred.
 18 See Udall, 132 Wn.App. at 299 (holding that under the Washington Deeds of Trust Act, “(1)
 19 delivery of the trustee’s deed is necessary to convey rights in real property sold during a
 20 statutory nonjudicial foreclosure sale of property; and (2) failure to record the deed within 15
 21 days of the sale merely precludes establishing a final sale date”). The Udall court explained
 22 that the purpose of recording “is to place subsequent purchasers on notice of property’s
 23 transfer from one owner to another, not to convey rights in land to the purchaser.” Id.

24

25

26 ⁴ If delivery of the deed to Danz had occurred after the bankruptcy filing, Bell would be
 right in asserting that the Danz’s interest in the property would not pre-date the bankruptcy filing
 because Danz waited longer than the fifteen-day statutory period to record the deed.

In this present case, delivery of the deed to the purchaser, Danz, occurred on February 21, 2007, before the bankruptcy filing on February 22, 2007. Accordingly, the interest in the property was conveyed to Danz prior to Bell's filing for bankruptcy. The Court holds that Bell no longer had an interest in the property when Bell filed for bankruptcy, and the property did not pass to the bankruptcy estate.

6 || V. Conclusion

The Court AFFIRMS Bankruptcy Judge Thomas Glover's Order Granting Summary Judgment, ROA 1.23, entered as docket no. 44 in the Adversary Proceeding No. 07-01140-KAO.

10 || IT IS SO ORDERED.

11 || DATED this 3rd day of March, 2008.

Thomas S. Zilly
Thomas S. Zilly
United States District Judge